



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2013

Mr. Wroe Jackson  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2697

OR2013-00351

Dear Mr. Jackson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 475436.

The Office of the Secretary of State (the "secretary of state's office") received a request for the voting history of non-citizens who were canceled from the state's voter rolls on the basis of their self-identification as non-citizens. You argue that section 62.113 of the Government Code precludes the secretary of state's office from responding to the request for information. We have considered your arguments.

Initially, we note the secretary of state's office is not required to create information for the purpose of responding to a request for information under the Act,<sup>1</sup> but must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). You raise section 62.113 of the Government Code and argue this statute prohibits the secretary of state's office from creating the requested information to respond to the request. Section 62.113 provides as follows:

(a) The [county clerk] shall maintain a list of the name and address of each person who is excused or disqualified under [subchapter B of chapter 62 of

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<sup>1</sup>See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

the Government Code] from jury service because the person is not a citizen of the United States.

(b) On the third business day of each month, the clerk shall send a copy of the list of persons excused or disqualified because of citizenship in the previous month to:

(1) the voter registrar of the county;

(2) the secretary of state; and

(3) the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.<sup>[2]</sup>

(c) A list compiled under this section may not be used for a purpose other than a purpose described by Subsection (b) or Section 16.0332 or 18.068, Election Code.<sup>[3]</sup>

(d) A person commits an offense if the person violates Subsection (c). An offense under this section is a Class C misdemeanor.

Gov't Code § 62.113. Thus, information maintained by a county clerk pursuant to section 62.113(a) and obtained by the secretary of state's office pursuant to section 62.113(b)(2) may only be used as provided by section 62.113(c). *Id.* § 62.113(a)-(c). Any other use of such information is a criminal offense. *Id.* § 62.113(d). You state the requestor "requests the voting history (if any) for each person on [the list obtained by the secretary of state's office pursuant to section 62.113(b)(2)]" for a certain time period. You explain the secretary of state's office would be required to use the list to create the requested voting history data set, which we understand you to state does not currently exist in the form requested by the requestor. You state the list may only be used for the purposes specified by section 62.113(c) and "[n]owhere in [the] statute is the [secretary of state's office] granted the authority to use the 'list' to produce the voting history reports." You contend the use of

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<sup>2</sup>Section 13.007 provides in part that "[a] person commits an offense if the person knowingly makes a false statement or requests, commands, or attempts to induce another person to make a false statement on a registration application." Elec. Code § 13.007(a).

<sup>3</sup>Section 16.0332 of the Election Code pertains to the use of the list created under section 62.113 by a voter registrar. See Elec. Code § 16.0332. Section 18.068 of the Election Code, as enacted by House Bill 174, 82nd Legislature, authorizes the use of the list to notify voter registrars of voters who are either deceased or not citizens. See Act of May 25, 2011, 82nd Leg., R.S., ch. 683, § 4, 2011 Tex. Sess. Law Serv. 1642, 1643. A second version of section 18.068, as enacted by House Bill 2817, 82nd Legislature, provides for the submission by a voter registrar to the secretary of state of a record of each voter participating in a primary, runoff primary, or general election or any special election ordered by the governor. See Act of May 29, 2011, 82nd Leg., R.S., ch. 1164, § 5, 2011 Tex. Sess. Law Serv. 3058, 3059.

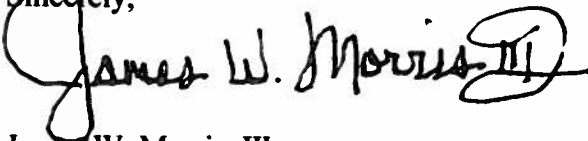
the list by the secretary of state's office to create the requested voting history information would be a violation of section 62.113(c) and "the construction of the statute therefore explicitly requires that the [secretary of state's office] not even entertain the creation of the requestor's desired information."

On review of your arguments, we find the creation of the requested information in this instance, using information obtained by the secretary of state's office pursuant to section 62.113(b)(2), would not constitute a use of the information permitted by section 62.113(c). Thus, we agree the use of information obtained by the secretary of state's office under section 62.113(b)(2) to create the requested information would be a violation of section 62.113(c). Accordingly, based on your arguments and our review, we conclude the secretary of state's office is prohibited by section 62.113 of the Government Code from creating the requested information and therefore need not respond to the request.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is stylized with a large, looping initial "J" and a cursive "W".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bhf

Ref: ID# 475436

c: Requestor